

STREETS AND SIDEWALKS*

- Art. I. Encroachments, §§ 22-1—22-40
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ARTICLE I. ENCROACHMENTS

Sec. 22-1. Definitions.

The following definitions shall apply to this article:

Encroachment includes going over, upon, under or using any public right-of-way or public watercourse in such a manner as to prevent, obstruct or interfere with its normal use, including the performance thereon of any of the following acts:

- (1) Depositing or leaving any rubbish, brush, earth, building material or other material of any nature whatsoever upon a public right-of-way or public watercourse so as to cause such public right-of-way or public watercourse to be littered, unsightly or obstructed.
- (2) Excavating, filling or disturbing the public right-of-way or public watercourse.
- (3) Displaying or storing merchandise or other property.
- (4) Block the traveled way or impede traffic.
- (5) Block or cover traffic-control devices duly installed by the city.
- (6) Erecting or maintaining any structure such as a flag, banner, decoration, post, sign, pole, fence, guardrail, wall, loading platform, mailbox, pipe, conduit, wire, vault or other structure on, over or under a public right-of-way or public watercourse.
- (8) Planting or allowing to extend, any tree, shrub, grass or other growing thing within a public right-of-way or public watercourse.

(9) Constructing, placing or maintaining on, over, under or within the public right-of-way any pathway, sidewalk, driveway, curb, gutter, paving, or other surface or subsurface drainage structure or facility.

(10) Constructing, placing, planting or maintaining any structure, embankment, excavation, tree, or other object adjacent to a public right-of-way or public watercourse which causes or will cause an encroachment.

Engineer shall mean the city engineer or his designated representative.

Permittee is any person, firm or corporation that proposes to do work or encroach upon a public right-of-way or public watercourse as herein defined and has been issued a permit for such encroachment in accordance with this article. "Permittee" is also the heirs and assigns and successors in interest of a permittee per section 22-11. For existing encroachments, as defined in section 22-13, or for encroachments not requiring a permit per section 22-3, "permittee" shall mean the current property owner adjacent to the encroachment.

Public right-of-way includes land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for and dedicated to the general public for street, highway, alley, public utility or pedestrian walkway purposes.

Public utility shall mean any person holding a franchise from the city or under the jurisdiction of the public utilities commission and special districts functioning to provide public utility services.

***Editor's note**—Section 1 of Ord. No. 811, adopted May 9, 1989, amended art. I to read as set out in §§ 22-1—22-32, reserving §§ 22-33—22-40. The effect of the ordinance, both in its numbering and in its text, has been to supersede former art. I, "In General," §§ 22-1—22-5, with §§ 22-6—22-16 reserved, and former art. II, "Openings and Excavations," §§ 22-17—22-30, with §§ 22-31—22-40 reserved. These two articles were derived from Code 1961, §§ 23.1—23.5, 23.7—23.11, and Ord. No. 534, § 1, adopted Apr. 8, 1974. In some cases, the new ordinance contained provisions contained either in former art. I or II. In those cases, a complete history note has been retained. Since the new art. I includes section numbers included in former art. II, the editor has reserved art. II with no title and with no section numbers.

Cross references—Numbering of buildings, § 7-197 et seq.; truck routes and weight limitations, § 14-46 et seq.; subdivision ordinance saved from repeal, § 17-5.

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Public watercourse is a channel for the carrying of stormwater, including both natural and artificial public watercourses.

Standard street improvements shall mean improvements to the public right-of-way or public watercourse in accordance with the Belmont Standard Specifications and intended for acceptance by the city for maintenance. Typical standard street improvements include sidewalk, curb, gutter, paving, street lighting, sanitary sewers and storm drainage facilities. (Ord. No. 811, § 1, 5-9-89)

Sec. 22-2. Encroachments—Prohibited.

It shall be unlawful and no permits shall be issued for any person to:

- (1) Deposit or leave any rubbish, brush, earth, building material or other material of any nature whatsoever upon a public right-of-way or public watercourse so as to cause such public right-of-way or public watercourse to become littered, unsightly or obstructed. See section 22-5(8) for temporary storage of construction material in a public right-of-way.
- (2) Display or store any merchandise or other property on a public right-of-way or public watercourse at any time. This section does not apply to items noted in section 22-3 as exempt from a permit or in section 22-5 for which a permit has been issued.
- (3) Constructing, placing or maintaining posts, poles, columns or structures for the support of advertising signs or for the purpose of carrying lights intended primarily for lighting abutting property, excepting political signs installed in accordance with section 23.7.3a of the Zoning Ordinance. Walkway lights intended for lighting the encroached area and abutting property without producing undue glare are permitted encroachments.
- (4) Block the traveled way or impede traffic.
- (5) Block or cover traffic-control devices duly installed by the city. (Ord. No. 811, § 1, 5-9-89)

Sec. 22-3. Same—No permit required.

No permit shall be required to:

- (1) Install and maintain a lawn, hedge, shrubs or other landscaping within a public right-

of-way, so long as they are maintained out of the traveled way for vehicles and pedestrians, they do not block established off-street parking spaces, and do not create a sight distance or safety problem.

- (2) Install and maintain a mailbox for a single-family home.
- (3) Install or maintain improvements by city employees or by a contractor working under contract for the city.
- (4) Perform maintenance or repair of any pipe or conduit lawfully on or under any public right-of-way or from making excavation, as may be necessary for the preservation of life or property when an urgent necessity therefor arises, except that the person making an emergency use or encroachment shall apply for permit the next business day. (Ord. No. 811, § 1, 5-9-89)

Sec. 22-4. Same—Permit required.

No person shall encroach or cause to be made any encroachment of any nature whatsoever within, upon, over or under the limits of any public right-of-way or watercourse without first obtaining a permit as required by this article. (Ord. No. 811, § 1, 5-9-89)

Sec. 22-5. Authority to issue permits for minor and routine encroachments; city engineer.

The city engineer may issue written permits, in accordance with this article, authorizing the permittee to do any of the following acts:

- (1) Excavating, filling or disturbing, per chapter 9 of this Code, the public right-of-way or public watercourse.
- (2) Constructing, placing or maintaining any structure within any public right-of-way below ground, such as any pipe, conduit, wire, utility vault or similar structure.
- (3) Constructing, placing or maintaining any structure within any public right-of-way or public watercourse roughly flush with the ground such as any pathway, driveway or other standard street improvement.
- (4) Constructing, placing or maintaining any structure above ground within any public right-of-way or public watercourse installed by a public utility, including but not lim-

ited to poles, wires, guy anchors, hydrants, aboveground cabinets for housing splices, transformers or switches.

- (5) Constructing, placing or maintaining a bus bench or shelter of a design acceptable to the city council.
- (6) Installing, placing or maintaining mail collection boxes owned and maintained by the United States Postal Service.
- (7) Constructing, placing or maintaining street trees in a location and type and manner approved by the parks superintendent.
- (8) Only under unusual circumstances, the temporary storing of construction material or the temporary installing of a bin for the collection of construction debris. (Ord. No. 811, § 1, 5-9-89)

Sec. 22-6. Authority to issue permits for major and unusual encroachments; city council.

The city council may issue and shall have the sole authority to issue written permits in accordance with this article authorizing the permittee to do any of the following acts:

- (1) Constructing, placing or maintaining fences, decorative walls, retaining walls, awnings, etc. within a public right-of-way.
- (2) Any act listed in section 22-5 or this section for which a written permit was denied by the city engineer and appealed to the city council.
- (3) Any other act not specifically prohibited or listed in this article shall be forwarded to the city council for review. (Ord. No. 811, § 1, 5-9-89)

Sec. 22-7. Application for permit.

(a) *Application Form and Content.* All applications for encroachment permits shall be submitted on a form provided by the director of public services. The applicant shall submit all required information. At a minimum, the application shall provide the following information:

- (1) Full name and residence or business address of the applicant.
- (2) Signature of the owner of the property adjacent to the encroachment when that property owner is the applicant. The signature

must be acknowledged by a notary public if the application is to be reviewed by the city council and ultimately recorded with the county recorder.

- (3) A scaled plot plan showing the location, dimensions and details of the proposed encroachment.
- (4) An accurate and complete description of the encroachment and an explanation of the need.
- (5) On larger projects:
 - a. A certificate of public liability insurance in an amount established by the council.
 - b. A certificate of property damage insurance in an amount established by the city council.
- (6) An agreement duly executed by the applicant indemnifying the city against liability resulting from the property encroachment and establishing responsibilities of the applicant.
- (7) An application fee established by the city council.
- (8) In addition to the information listed above, the public services director may require additional information, including a survey, photographs, sketches, diagrams or similar exhibits necessary to illustrate location, dimension and purpose of the proposed encroachment and its relation to existing and proposed facilities in the public right-of-way or public watercourse.

(b) *Procedure for Application Reviewed by the City Engineer.* Applications may be approved, approved with conditions, or denied. If the city engineer finds that the application is in accordance with the requirements of this article, including the city standards as noted in section 22-23, a permit shall be issued for the encroachment, attaching such conditions as may be deemed necessary for health, safety and welfare of the public and protection of the city. Any permit denial shall be in writing. Denied permits may be appealed to the city council. In addition to other appropriate conditions, the following may be established:

The time and dates on which the encroachment may be constructed or established.

The supervision and safety precautions to be employed, including the erection of barricades, warning lights, signals and signs, and the employment of personnel to direct traffic.

The city engineer may choose to approve or conditionally approve the application if the city engineer finds as follows:

- (1) That there is some public benefit to the encroachment.
- (2) That the encroachment will not unduly restrict the public right-of-way or public watercourse for other typical uses.
- (3) That the city will be duly protected from liability for injury to persons and property.
- (4) That faithful performance of all conditions and requirements specified in the permit will be guaranteed by the required bonds.

(c) *Procedure for Applications Reviewed by the City Council:* Applications may be approved, approved with conditions or denied. All applications shall be submitted to the director of public services. The director of public services shall make a recommendation to the city council. If the director of public services finds the application is in accordance with the requirements of this article, the director shall recommend approval, attaching such conditions as the director may deem necessary for the health, safety and welfare of the public and for the protection of the city.

When an encroachment is proposed by an adjacent property owner, the owners of the adjoining properties fronting the street where the encroachment is proposed, plus any property directly affected by the encroachment, shall be notified of the proposed encroachment, of the scheduled time and place when the item will be heard, and of their right to express any concerns at the scheduled council meeting prior to council taking action on the encroachment.

The city council may choose to approve or conditionally approve the application if it finds as follows:

- (1) That there is some public benefit to the encroachment. Examples of public benefit include but are not limited to a retaining wall that allows an added off-street parking space, sidewalk or safer sight distance. Other examples include retaining walls that reduce grading onsite (without themselves becoming unsightly), fences that provide a

safety handrail for pedestrians, or encroachments that replace or improve an existing undesirable physical condition or provide other neighborhood betterment.

- (2) That the encroachment will not unduly restrict the public right-of-way or public watercourse for other typical uses.
- (3) That the city will be duly protected from liability for injury to persons and property.
- (4) That faithful performance of all conditions and requirements specified in the permit will be guaranteed by the required bonds. (Ord. No. 811, § 1, 5-9-89)

Sec. 22-8. Continual maintenance.

The permittee shall maintain, repair, service and clean the encroachment at the sole expense of the permittee. Standard street improvements accepted for maintenance by the city, excepting sidewalks, shall be excepted from this section. In accordance with section 5610 of the Streets and Highways Code, the adjacent property owner is responsible for maintaining sidewalk adjacent to his property in such condition that the sidewalk will not endanger persons or property. (Ord. No. 811, § 1, 5-9-89)

Sec. 22-9. Removal for public improvements.

The permittee shall remove or relocate encroachment that would interfere in any way with the construction, maintenance or repairs of any public utility, public works or public improvement of any descriptions if so required by the City engineer in writing. Ten (10) days notice shall be all that is required. The cost and expense of such removal or relocation shall be borne by the permittee. Standard street improvements accepted for maintenance by the city and sidewalks shall be excepted from this section. (Ord. No. 811, § 1, 5-9-89)

Sec. 22-10. Removal for disuse.

The permittee shall remove encroachment and restore the adjacent area if the encroachment falls to disuse for a period of six (6) months if requested by the city engineer in writing. Standard street improvements accepted for maintenance by the city and sidewalks shall be excepted from this section. (Ord. No. 811, § 1, 5-9-89)

Sec. 22-11. Recording of encroachment agreement by council.

Upon approval by the council of an encroachment permit and signature by the mayor of the approved resolution and encroachment agreement, the city clerk shall have the approved resolution and agreement filed with the county recorder. Said filing shall constitute notice to all heirs and assigns and successors in interest of the permittee of the responsibility of the permittee, with respect to maintenance, liability and potential relocation of the encroachment. (Ord. No. 811, § 1, 5-9-89)

Sec. 22-12. Permit fees and bonds.

(a) *Fee:* The fees to accompany the permit application shall be as approved by resolution by the council. No permit application will be accepted without the required fee.

(b) *Cash Deposit and Surety Bond:* After city approval of the encroachment and prior to receiving the permit, the applicant shall deposit with the city engineer five hundred dollars (\$500.00) in cash and a surety bond in an amount, including the cash deposit, equal to one hundred (100) percent of the cost of constructing the encroachment. The cash deposit and surety bond are referred to as the bonds. The bonds are intended to guarantee that all conditions and requirements of the encroachment permit will be faithfully upheld and will be completed within the time period specified in the permit. The bonds also will be used by the city, if necessary, to repair to the satisfaction of the city engineer any damage caused to the city streets or property by the permittee in the course of the work. The surety bond shall be executed by sureties approved by the city engineer and shall be in such form as approved by the city attorney. The form of the bonds shall be such that the city may proceed against the permit holder and his sureties on the bonds immediately upon any default, without waiting for the completion of work done. The bonds shall guarantee the work and shall remain in effect for a period of six (6) months following completion of said work. (Ord. No. 811, § 1, 5-9-89)

Sec. 22-13. Existing encroachments.

Any existing encroachment in the public right-of-way which, in the opinion of the director of public services, interferes with the safe sight distance of drivers or pedestrians or blocks the free passage of pedestrians or vehicles or otherwise

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constitutes a threat to health and safety shall be removed forthwith by the adjacent property owner upon written notification from the public services director. If the property owner fails to remove the encroachment, then city forces may remove the encroachment, at the direction of the director of public services; and the property owner shall be billed for this work.

Any existing encroachment prohibited in section 22-2 shall not be exempt from this section.

No existing encroachments shall be exempt from section 22-8, "Continual Maintenance," 22-9, "Removal for Public Improvements," or 22-10, "Removal for Disuse," regarding responsibility of property owner for maintenance or possible relocation or reconstruction of encroachments. When no permit has been issued, the responsibilities of the permittee listed in these three (3) sections shall be the responsibilities of the current homeowner.

This section shall not be construed to prohibit the city from requiring upgrading or removal of existing encroachments as a condition of development. (Ord. No. 811, § 1, 5-9-89)

Secs. 22-14–22-21. Reserved.

Sec. 22-22. Permit time limit.

Any permit issued under this article shall become effective upon the deposit of the required bonds. Unless noted otherwise on the permit, said permit shall be effective for a period of ninety (90) days. A permit may be renewed for an additional ninety (90) days with the approval of the city engineer. (Code 1961, § 23.2.3; Ord. No. 534, § 1, 4-8-74; Ord. No. 811, § 1, 5-9-89)

Sec. 22-23. Conformance to city standards and state laws.

All work done under the provisions of this article shall conform to city standards and state laws. All encroachments shall be constructed under the supervision of a city inspector. Should any dispute arise regarding conformance to specifications, such dispute shall be decided by the engineer; and the decision of the latter shall be final and conclusive. (Code 1961, § 23.3; Ord. No. 534, § 1, 4-8-74; Ord. No. 811, § 1, 5-9-89)

Sec. 22-24. Inspection, certificate of approval.

At the completion of the work described in the permit required by this article, the inspector shall examine the work; and if the work has been done

and completed to his satisfaction and approval, and all rubbish and debris removed, the inspector shall give such person a certificate to that effect. When standard street improvements are installed, the certificate of approval shall be signed by the city engineer and shall indicate if the improvement has been accepted by the city for maintenance. Sidewalks will not be accepted by the city for maintenance. (Code 1961, § 23.3.1; Ord. No. 534, § 1, 4-8-74; Ord. No. 811, § 1, 5-9-89)

Sec. 22-25. Disapproval; correction by permittee; correction by city.

In the event that the work referred to in this article is not done and completed to the satisfaction and approval of the inspector, the inspector shall give five (5) days' notice to the permittee, excluding Saturdays, Sundays and holidays, of said dissatisfaction and disapproval to the permittee. If not corrected within the five (5) days, then the inspector shall not issue a certificate of approval but shall at once proceed to have said work put into such condition as shall meet the city specifications, or to restore the site to original condition at the discretion of the city engineer. If the disapproval is based solely on the need for clean-up of the work area or the street, only twenty-four (24) hours' notice is required before the city may take action to correct the problem and deduct the funds from the bonds. The city engineer shall certify such facts in writing for the city council and shall certify the expense thereof to the city attorney. (Code 1961, § 23.3.2; Ord. No. 534, § 1, 4-8-74; Ord. No. 811, § 1, 5-9-89)

Sec. 22-26. Forfeiture of cash deposit or surety bond; suit for costs incurred by city.

If the work performed by any person under this article is not done and completed to the satisfaction and approval of the city engineer, the deposit or bond made by such person prior to receiving the permit shall be for the use of the city and as part payment for the damage thereby sustained by the city. The city attorney shall, upon direction of the city council, commence suit in the name of the city against such person for any additional damage which the city may have sustained by reason of the incomplete doing of such work, including cost of engineering, attorney and court costs, properly attributable. (Code 1961, § 23.3.3; Ord. No. 534, § 1, 4-8-74; Ord. No. 811, § 1, 5-9-89)

Sec. 22-27. Refund of deposit.

Each person having received a certificate of approval pursuant to this article shall be paid the amount of cash deposit to which that person is entitled, or be allowed to withdraw the surety bond on deposit with the city covering the work of the permit at the completion of the warranty period. (Code 1961, § 23.3.4; Ord. No. 534, § 1, 4-8-74; Ord. No. 811, § 1, 5-9-89)

Sec. 22-28. Exemptions.

Any excavation of a public area by or on behalf of the city shall be exempt from the provisions of this article. No fee or Bonds shall be required of the Belmont County Water District. A minimum of one (1) working day's notice to the city shall be required, except in emergencies. Conformance to all other provisions of this article and all other pertinent city requirements is mandatory. (Code 1961, § 23.4; Ord. No. 534, § 1, 4-8-74; Ord. No. 811, § 1, 5-9-89)

Sec. 22-29. Map showing utility fixtures required.

Every public utility maintaining pipes, conduits, cables or other equipment in the streets of the city shall file with the city engineer during the month of January of each year a map indicating the size and location of each pipe, conduit, cable or other equipment owned or maintained by such public utility in the streets of the city; provided, however, that after the public utility has in the first instance filed such map, it may thereafter in lieu of filing a new map each year, revise the map on file so as to show changes and extensions. (Code 1961, § 23.4; Ord. No. 534, § 1, 4-8-74; Ord. No. 811, § 1, 5-9-89)

Sec. 22-30. Nuisance declared.

Any encroachment of a public right-of-way or public watercourse contrary to the provisions of this article shall be and the same is hereby declared to be unlawful and a public nuisance. (Ord. No. 811, § 1, 5-9-89)

Sec. 22-31. Deleted.

Sec. 22-32. Penalty.

(a) Any person violating any of the provisions of this article shall be deemed guilty of a misde-

meanor and upon conviction thereof shall be punished with a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment.

(b) Each person shall be guilty of a separate offense for every day during any portion of which any violation of any provision of this article is committed, continued or permitted by such person and shall be punishable therefor as provided in this article. (Code 1961, § 23.5; Ord. No. 534, § 1, 4-8-74; Ord. No. 811, § 1, 5-9-89)

Note—Formerly, § 22-30.

Secs. 22-33—22-40. Reserved.

ARTICLE II. RESERVED*

ARTICLE III. MOVING BUILDINGS†

Sec. 22-41. Permit required.

No building or other structure shall be moved along, over or across any street or other public thoroughfare in the city until a permit therefor is issued by the city clerk pursuant to a written application for such permit and in compliance with all of the provisions of this article by the applicant for such permit. (Code 1961, § 23.12)

Sec. 22-42. Permit application required; deposit, insurance.

Every applicant for a permit to move a building or other structure, along, over or across any street or other public thoroughfare in the city shall file a written application therefor showing the name and address of the applicant, his compliance with the requirements of the Vehicle Code of the state if such moving operation involves the use of a vehicle designated in the Vehicle Code as overweight or oversize, and shall deposit with the application the sum of one hundred dollars (\$100.00) to be used by the city to reimburse itself for the reasonable value of the time of each officer or employee of the city at the rate of not less than five dollars (\$5.00) per hour for such time as each member of the

***Note**—See the editor's note to art. I of this chapter.

†**Cross reference**—Building regulations generally, ch. 7.